**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1228 / 04 S/S

Mahesh Chandra Singh Bisht

Vs

Secretary Defence Govt. of India, and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 15.02.2006

Initial of Judge

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No.1228 of 2004 (SS)

Mahesh Chandra Singh Bisht s/o Sri Sher Singh
R/o Village Tunta, Kandara Chinna, Didihat
District Pithoragarh ..... Petitioner

Versus

1. Secretary Defence, Govt. of India, Ministry Of Defence, New Delhi
2. Lt./Capt./Maj. Record Office, Kumaon Resiment, Ranikhet ..... Respondents

Sri Anil Dabral, Advocate for the petitioner
Smt. Anjali Bhargava for the respondents.

Dated: 15.2.2006

**Hon'ble Rajesh Tandon J.**

Heard Sri Anil Dabral, counsel for the petitioner and the Smt. Anajali Bhargava, Standing counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 6.8.2001 and 27.11.2002 passed by the respondents no. 1 & 2 respectively.

Briefly stated the petitioner was inducted in service as Sepoy in Indian Army in the year 1984. During the course of his service he was deployed at various places. At the time of recruitment the petitioner was medically fit. On 30th April 2001 the petitioner was discharged on the ground that he was suffering from Non Insulin Dependent Diabetes Mellitus. The petitioner applied for disability pension to PCDA (P) Allahabad. The PCDA (P) Allahabad vide letter No. G-3/69/114/5-2001

dated 19th July 2001 rejected the disability pension claim of the petitioner on the ground that the disease was constitutional in nature and not related to service. Against that order the petitioner preferred appeal to the Secretary Government of India, Ministry of Defence, New Delhi which was also rejected vide order dated 27.11.2002.

Counter affidavit has been filed by the respondents. According to the respondents as per opinion of the specialist the petitioner ws diagnosed as non-insulin dependent diabetics MELITUS- 250 (NIDDM) since 14.11.98 and treated upto 15.9.2000 and recommended for the release of the petitioner from service in Medical Category BEE (Permanent). According to the respondents the petitioner was brought before a duly constituted release medical board help on 15.9.2000 at 175 MH and the petitioner was approved for discharge from service. The claim of the petitioner for disability pension was forwarded to the Principal Controller of Defence Accounts (Pension) Allahabad which was rejected by the competent authority. The petitioner filed an appeal to the appellate authority which was also rejected vide order dated 27.1.2002.

From the record it appears that the petitioner has served more than 16 years in the Army. At the time of his recruitment he was hale and hearty and he was not found suffering from any constitutional disease and there is nothing in his service record that at the time of his enrolment in military service he was suffering from any kind of disease. He has undergone scrupulous training after recruitment and he also took part in games and extra curricular activities. The ailment suffered to

him during his service in the Army and as such according to the petitioner the disease is attributed to military service and he is entitled for disability pension.

It has been held by the Apex Court in the case Madan Singh Shekhawat vs. Union of India and others (2000)1 UPLBEC 3471, as under:-

*"The grant of disability pension is governed by the various Rules found in Defence Services Regulations:*

*Rule 10 of the said Rules reads thus:*

*"Casual leave counts as duty except as provided for the Rule 11 (a)"*

*As per this Rule when an army personnel is on casual leave, same is counted a duty unless he comes under any one of the exceptions under Rule 11 (a) of the Rules. It is not the case of the respondents that the appellant comes under any such exceptions. Therefore, as per rule 10(a), the appellant was on duty at the time of the accident.*

*Rules 48 of the said Regulation contemplates admissibility of disability pension. It has enumerated various cases under which an army personnel is entitled to the grant of disability pension.*

*Rule 48 reads thus:*

*"Disability pension when admissible an officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a*

*disability element in accordance with the regulations in this section.*

*The question of disability pension came up for consideration in the case Mahavir Singh Rawat vs. Union of India and others 2001 (1) A.W.C. 363 it has been held as under:*

*"The case of the petitioner for disability pension is squarely covered by the provisions of Para 173 of the Pension Regulations. It reads as follows:*

*"173. Unless otherwise specifically provided a disability pension may be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.*

*The question whether a disability is attributable to or aggravate by military service shall be determined under the rules in Appendix II."*

*This provision requires that invalidation from the military service should be on account of disability which is attributable to or aggravated by the military service and the same shall be determined under the Entitlement Rules contained din Appendix II. The Entitlement Rules provide for the manner of award of disability pension. Rule 2 (a) provides that disablement will be accepted as due to military service provided it is certified that the disablement is due to a disease which is attributable to military service or which existed before or arose during the military service and has been and remains aggravated thereby. This rule means that an employee who has been boarded out may suffer from a particular disease but if it aggravated after entering service resulting in his discharge from service due to the disability, it*

*will entitle him to claim disability pension. It shows that even a disease contracted prior to the entry into service can be a basis to claim disability pension provided it aggravated after the entry into service. ……. ……. …….*

*Now it would be appropriate to advert to the other important rule regarding awarding of the disability pension in respect of illness. It is Rule 7, which may for the same of clarity, be extracted in extenso:-*

*"7. In respect of disease, the following rules will be observed:*

*Cases, in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.*

*(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.*

*© If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.*

*(d) In considering whether a particular disease is due to military service, it is necessary to relate the established facts, in the aetiology of the disease and of its normal development, to the effect that conditions of service e.g. exposure, stress, climate etc. may have had on its manifestation. Regard must also be had to the time factor (also see Annexure).*

*(i)……..*

*(ii) Common disease known to be affected by stress and strain-This should be decided with due reference to the nature of the duties an individual has had to perform in military service. If may be that in some cases the individual had been engaged on sedentary duties when they will normally not qualify."*

*An analysis of the above provisions with regard to the award of the disability pensions, in true perspective, leaves no room for doubt that an employee who has been invalidated is entitled to disability pension even if he was suffering from the disease prior to his enrolment in service but it aggravated due to stress and strain of the duties while in employment. The benefit of reasonable doubt shall always be extended in favour of the boarded out employee if a claim for disability pension is made and it is established that at the time of enrolment in service he was not having any ailment of the type for which he has been invalidated."*

In the instant case the petitioner was enrolled in the Army in the year 1984. At the time of recruitment the petitioner had undergone vigorous, through and intensive medical examinations, which would certainly rule out the possibility of his suffering from any disease but the deceased Non Insulin Dependent Diabetes Mellitus was detected after he completed

16 years of service. The respondents have admitted that the petitioner have taken part in War and also remained posted in very high attitude on duty during his service.

There may be confliction and contradiction on the opinion that the alleged disease to the petitioner was constitutional or attributable to the military service but there is not doubt that the said disease was borne out to the petitioner during his employment in the Army and thus the employer of the petitioner is bound to give treatment to the petitioner during service and if he was not found fit for military service, to give him disability pension.

In view of above, a writ of certiorari is issued quashing the order dated 6.8.2001 and 27.11.2002. The respondents are directed to pay disability pension to the petitioner according to rules.

Accordingly, the writ petition is allowed. No order as to costs.

Dated: 15.2.2006 **Rajesh Tandon J.**

**Dhyani*